

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JASON C. GIANETTA,)
)
Petitioner,)
v.) Civil Action No.
MARTY C. ANDERSON, Warden,)
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Respondent.)

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ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition herein for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that the petition for a writ of habeas corpus be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the Magistrate in which he asserts that his petition should be amended to be construed as a Bivens action.

Having fully reviewed the record de novo, the Court agrees with the Magistrate that the petition should be dismissed on the grounds that it is not properly before this Court. Regardless of petitioner's assertions, there are no issues raised that are appropriate for habeas corpus relief. This dismissal is without prejudice, and should he continue to desire to do so, petitioner may file a Bivens action through the proper procedural method. Accordingly, the Court finds that the conclusions of the Magistrate should be approved.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

s/ Gary A. Fenner

Gary A. Fenner, Judge
United States District Court

DATED: May 24, 2011